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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by the Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[12 March 1996]

1. Human Rights Watch takes no position on the issue of self-determination. However, we are deeply concerned that the United Nations organized referendum in the Western Sahara, intended to resolve the 20-year-old conflict between Morocco and the Polisario Front, is not being carried out in a free, fair or transparent manner. In 1995, Human Rights Watch sent a mission to Western Sahara to investigate aspects of the referendum process and to observe conditions in the Polisario Front prisoner of war camps. This statement is based on the findings of that mission. While both parties have routinely created obstacles to progress, Morocco, which is the stronger of the two parties both militarily and diplomatically and now physically controls most of the Western Sahara, has regularly engaged in actions that have compromised the fairness of the process. At the same time, the United Nations mission (MINURSO) has so far failed to fulfil its obligation to ensure the fairness of the upcoming referendum.

2. Citing slow progress in the voter registration process, the Secretary-General of the United Nations has repeatedly recommended the postponement of a transitional period, during which the United Nations was to have had powers including the responsibility for monitoring law and order in the territory, as well as the right to ensure that laws or measures that could obstruct a free and fair referendum were suspended. This has delayed indefinitely the United Nations mission's assumption of powers essential to its effective supervision of the voter registration process.

3. Among the serious flaws and violations in the referendum process are the fact that Moroccan security forces routinely prevent Western Saharans seeking to submit voter applications from entering the United Nations complex in the Western Saharan capital of Laayoune. Applicants going through the voter registration process in the Moroccan-controlled Western Sahara are not permitted to come to the voter registration centre on their own; rather, they are gathered in a central location and brought to the voter registration centre in Moroccan vans. The United Nations has not formally investigated reports that Morocco has intimidated applicants who have come forward to be identified in the Moroccan-controlled Western Sahara, or allegations that registration receipts have sometimes been illegally confiscated by Moroccan authorities.

4. In addition, Western Saharan (Sahrawi) tribal leaders involved in the voter registration process report that Morocco has pressured Sahrawi tribal leaders living in the Moroccan-controlled Western Sahara on how they should rule in individual cases. This has reportedly occurred through intimidation, either in advance or by Moroccan observers present in the voter registration room, who often signal to tribal leaders. In addition, MINURSO staff members report that they have come under pressure from certain senior United Nations staff members to make decisions on voter eligibility that favour Morocco and are contrary to the accepted procedures.

5. In order to be eligible to vote in the referendum, applicants have to prove that they meet one of five criteria agreed to by the parties, including membership in a Sahrawi tribe, or proving that their father was a Sahrawi born in the territory. A large number of the applicants submitted by Morocco have no documents proving links to the Western Sahara, are not familiar with the tribal structure of the region and have clearly memorized answers to the factual and biographical questions posed by the Commission. Many of these applicants are among the 40,000 people Morocco transferred to the Western Sahara in 1991, in violation of the terms of the Settlement Plan, stating that they were Sahrawis who wanted to vote in the referendum. For over four years, this population has lived under 24-hour guard in tent cities in the Western Sahara, and received food and other benefits from the Government of Morocco. Access to the tent cities is tightly restricted by Moroccan police and secret service agents. Despite indications that individuals with questionable ties to the Western Sahara are being presented for registration, there is little opportunity to scrutinize MINURSO procedures or guidelines for making the final decisions on eligibility. Although the general criteria for eligibility are known, MINURSO final decisions are made behind closed doors, and no decisions have been announced on the more than 50,000 applicants who have already been identified by MINURSO.

6. Opportunities for independent outsiders to observe and analyse the voter registration process in the Moroccan-controlled Western Sahara are strictly limited. MINURSO staff members, including military observers, are subjected to constant surveillance, making them reluctant or frightened to speak openly. Journalists and representatives of non-governmental organizations are permitted to spend no more than 30 minutes in the MINURSO identification centre in Laayoune, a period that is too brief to permit meaningful observation of a complex process. Harassment, detention and surveillance of independent observers has impeded the ability to conduct a thorough investigation of human rights abuses in the Moroccan-controlled Western Sahara. In addition, they have also sent the signal that the referendum process is not being carried out in a transparent manner and that MINURSO is acquiescing to Moroccan interference.

7. The internal situation in the Moroccan-controlled Western Sahara has also been tense, as Morocco has continued to engage in human rights abuses. On 11 May 1995, eight young men were arrested in Laayoune following a peaceful, pro-independence demonstration, and sentenced to 15 to 20 years' imprisonment by a military court in Morocco. Following domestic and external pressure, the King commuted the eight Sahrawis' sentences to one year on 9 July 1995.

8. Hundreds of Sahrawis who had been victims of forced disappearances but were released in June 1991 still have not received any compensation from the Government of Morocco. Moreover, hundreds of cases of Sahrawis who reportedly disappeared at the hands of the Moroccan authorities up to two decades ago remain unresolved and the Government of Morocco has made no effort to investigate or hold accountable those responsible for disappearances.

9. An estimated 165,000 Sahrawis live in desert camps in south-western Algeria, where they took refuge 20 years ago, after armed conflict had broken out between Morocco and the Polisario Front. The refugees receive humanitarian assistance from international relief organizations, United Nations agencies and the European Community. Polisario administers these camps and appears to provide assistance to Sahrawi refugees on a timely and equitable basis. Although living conditions in the desert are difficult and the location of the Polisario camps is remote and desolate, no evidence of food shortages, epidemics or other major health problems was observed. Although most refugees express openly their unhappiness with the difficulties of living in the camps, there is no evidence that the Polisario is keeping refugees there forcibly. Rather, most of the difficulties and restrictions faced by the refugees are a result of their remote situation and the harsh climate in the desert, the economic and political difficulties of the region and the realities of being a stateless refugee population. Some refugees have returned to the Moroccan-controlled Western Sahara, and some Sahrawis have left the Moroccan-controlled Western Sahara since the original exodus, to join Polisario and live in the camps.

10. Over 2,300 Moroccan prisoners of war and up to 300 Polisario prisoners of war are still being held in Algeria and in Morocco, respectively. The International Committee of the Red Cross has visited both sets of prisoners regularly since May 1993, with some interruptions. Human Rights Watch has visited two Polisario prisoner camps, where it found detention conditions to be extremely harsh, particularly due to the desolate desert location, intense

heat, and the constant threat of sudden sandstorms. Some prisoners complained about their physical treatment at the hands of prison guards, while others emphasized that this had improved in the past five or six years. All the prisoners complained about insufficient food and medication, as well as about compulsory, unpaid labour, which was required for long hours, in a harsh climate.

11. Human rights violations in the Moroccan-controlled Western Sahara, and problems related to the prisoners of war and refugees will continue as long as the conflict remains unresolved. MINURSO's current mandate expires on 31 May 1996, and the Secretary-General has indicated that the troubled operation may be phased out.

12. Human Rights Watch believes that terminating the mandate of MINURSO would mean giving up on an effort to settle a conflict that has caused very serious human rights violations, and if resumed, is likely to cause them again. Instead of ending it, the United Nations should provide the MINURSO mandate with the tools enabling it to conduct a free and fair referendum. This should include a heightened United Nations civilian police presence in the Moroccan-controlled territory, in order to prevent intimidation and restrictions on access and movement. In addition, there must be an independent review of the registration process so far in order to eliminate any results that have been improperly or unfairly obtained. The process should then continue in an open and transparent manner, with known rules and guidelines. Finally, a strong signal must be sent to the Government of Morocco to cease its interference with the referendum process and the violation of human rights in the Western Sahara.